

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

JOHNSON & JOHNSON AND LIFESCAN, INC.,

Plaintiffs,

- against -

SOUTH POINTE WHOLESALE, INC., ET AL.,

Defendants.

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x

08 Civ. 1297 (SLT) (SMG)

CONSENT ORDER

On consent of Plaintiffs Johnson & Johnson and LifeScan, Inc. ("LifeScan"), (together, "Plaintiffs") and Defendants Brothers Trading Co. Inc. d/b/a Victory Wholesale Grocers, Drogueria Central Inc. and Alvin C. Eder, (collectively, the "Victory Defendants"), it hereby is ORDERED, ADJUDGED AND DECREED:

1. The Victory Defendants and their agents, servants, employees, affiliates, subsidiaries are permanently enjoined from:

(a) knowingly infringing or knowingly using in commerce any of the OneTouch Marks on any counterfeit or repackaged product, or any marks confusingly similar thereto, in connection with the manufacture, sale, offer for sale, distribution, advertisement, or any other use of OneTouch blood glucose test strips (the "OneTouch Products"). The OneTouch Marks are defined collectively as LIFESCAN (Reg. No. 1,384,863), ONETOUCH (Reg. Nos. 3,039,103; 2,863,393), ONE TOUCH (Reg. Nos. 1,484,999; 2,710,143), ONE TOUCH ULTRA (Reg. No. 2,538,658), INDUO (Reg. No. 2,652,567), ULTRASMART (Reg. No. 2,730,626); JOHNSON & JOHNSON (Reg. No. 0,648,450); or

(b) holding itself out to be an Authorized Distributor of OneTouch Products.

2. If the Victory Defendants and their agents, servants, employees, affiliates, and subsidiaries choose to purchase any products with the OneTouch Marks, the Victory Defendants shall obtain a pedigree signed by the supplier that traces the product back to LifeScan or an Authorized Distributor, as found on www.LifeScan.com, www.jnjgateway.com, or otherwise published by LifeScan, Johnson & Johnson or one of its direct or indirect subsidiaries. The signed pedigree shall include, at a minimum, an unbroken chain of invoices showing lot numbers, product type, and expiration dates.

3. The Victory Defendants shall retain any records documenting the sale, distribution, receipt or pedigree of any product bearing any of the OneTouch Marks for a period of at least three years.

4. Any claims that the Victory Defendants may have against any other individual or entity arising out of the Victory Defendants' purchase, distribution, advertising, offering for sale and sale in commerce of the products containing the OneTouch Marks are hereby assigned to Plaintiffs.

5. Nothing contained in this Consent Order is or shall be construed to constitute an admission, express or implied, of any improper or illegal conduct, or of any culpability or liability by the Victory Defendants. Further, it is expressly understood and acknowledged that the Victory Defendants maintain that they did not know and had no reason to know that any of the OneTouch products that they purchased and thereafter sold were other than genuine, and the Victory Defendants maintain that they made reasonable efforts to ensure that the OneTouch products they purchased and resold were genuine.

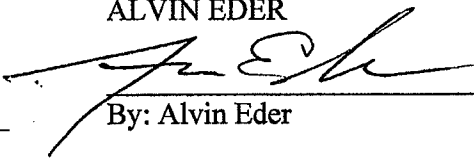
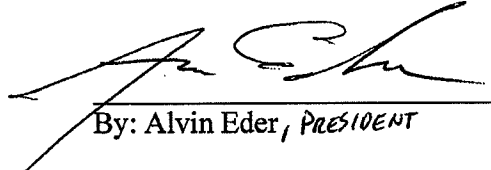
6. In addition to other remedies, including damages, for contempt of this Consent Order, in the event of breach or violation by the Victory Defendants, their agents, servants, employees, affiliates or subsidiaries with the terms of this Consent Order, Plaintiffs are entitled to a preliminary and permanent injunction against the breaching conduct solely upon a showing of a likelihood of success of establishing that such a breach occurred. Plaintiffs and the Victory Defendants each agree that jurisdiction and venue for such an action exist in this District Court, and the Victory Defendants waive any and all defenses based on personal jurisdiction, subject matter jurisdiction and venue.

7. This Consent Order is entered pursuant to Rule 58 of the Federal Rules of Civil Procedure, and this action is hereby dismissed, with prejudice, only against the Victory Defendants without costs or attorney's fees, save that this District Court shall retain jurisdiction over this action, including, without limitation, over implementation of, or disputes arising out of, this Consent Order or the settlement of this action with regard to the Victory Defendants.

8. Signatures transmitted electronically or by facsimile shall be deemed original.

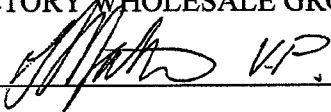
Dated: October 29, 2009

CONSENTED AND AGREED TO BY:

Date: <u>10/29/09</u>	ALVIN EDER  By: Alvin Eder
Date: <u>10/29/09</u>	DROGUERIA CENTRAL INC.  By: Alvin Eder, <i>PRESIDENT</i>

Date: 10/29/09

BROTHERS TRADING CO. INC. D/B/A
VICTORY WHOLESALE GROCERS

By: 

HODGSON/RUSS LLP

By: 

Joseph Goldberg

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By: _____

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(914) 449-1055

Attorneys For Alvin Eder

SO ORDERED:

UNITED STATES DISTRICT JUDGE

BROTHERS TRADING CO. INC. D/B/A
VICTORY WHOLESALE GROCERS

Date: _____

By: _____

HODGSON RUSS LLP

By: _____

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SO ORDERED:

UNITED STATES DISTRICT JUDGE